

COMMENTS

The enclosed is responsive to the Examiner's Office Action mailed on July 6, 2007. At the time the Examiner mailed the Office Action claims 1-36 were pending. By way of the present response the Applicant has: 1) amended claims 1, 17 -18, 26 and 34; 2) not canceled any claims; and, 3) not added any claims. As such, claims 1-36 remain pending. The Applicant respectfully requests reconsideration of the present application and the allowance of claims 1-36.

35 USC 101 Rejections

The Examiner has rejected independent claims 1 and 18 under 35 USC 101 as being directed to non-statutory subject matter. According to the Examiner, "[t]he claims appear to be define the metes and bounds of an invention comprised of software alone without claiming associated computer hardware required for execution. Software alone, without a machine, is incapable of transforming any physical subject matter by chemical, electrical, or mechanical acts. Although the Applicant respectfully disagrees with the Examiner, in order to advance the prosecution of the present application towards allowance, the Applicant has amended the respective preambles of claims 1 and 18 to recite "[a]n integrated logging and tracing system employed within a system of computers interconnected through a network." The Applicant respectfully submits that claims 1 and 18 are directed to patentable subject matter at least in view of the above described amendment.

The Examiner has rejected claim 34 as being directed to non-statutory subject matter. According to the Examiner, the Applicant's "specification defines several articles of manufacture including non-statutory media such as data signals embodied in a carrier

wave . . . ". The Applicant respectfully disagrees with the Examiner. Without addressing the issue of whether or not signals embodied on a carrier wave are patentable or not, the Applicant respectfully submits that claim 34 does not contemplate carrier waves or other propagation media because, as originally written, claim 34 recites "[a]n article of manufacture having program code stored thereon . . . ". See, Examiner's Office Action, mailed 7/6/07, p. 2. Carrier waves and propagation media are not capable of storing program code. Therefore claim 34 as written does not offend the Examiner's definition of patentable subject matter.

35 USC 103 Rejections

The Examiner has rejected independent claims 1, 18, 26 and 34 under 35 USC 103 as being obvious in view of the combination of U.S. Pat. No. 6,539,501 (hereinafter, "Edwards") and U.S. Pat. No. 7,174,370 (hereinafter, "Saini"). The Examiner has reasoned that Edwards teaches both a tracing module and a logging module but fails to teach the presence of a network and that Saini teaches the missing network. See, Examiner's Office Action, 07/06/07, p. 3.

The Edwards reference teaches a system in which application software code is instrumented with monitoring code, referred to as a "log method" that interfaces with a "logger daemon" (12) in order to fully perform application monitoring. The log method writes (or causes the logger daemon to write) the information being traced into a trace queue (16). The logger daemon empties the queue by writing the trace data into a more permanent storage means (the "log file"). The following citations from Edwards are noteworthy in this regard.

In preferred embodiments, the user would insert one or more log methods into the source code 6 as trace statements to monitor the execution path of the source code.

Col. 3, lines 16-18.

During execution, execution of the log method will cause the thread executing the object code 10 to generate trace data and then call the logger daemon to further handle the trace data.

Col. 3, lines 58-61.

In preferred embodiments, the thread executing the object code 10 would buffer gathered trace data into the trace queue 16 and the logger [daemon] 12 would write the trace statements to the log file 14.

Col. 3, lines 8-13.

If the developer decides to activate the tracing function, i.e., TraceOn . . . then a separate logger daemon 12 executing independently of the thread executing the object code will spawn a thread to monitor the trace queue 16 and write trace statements to the log file 14.

Col. 5, lines 12-17.

The above statements indicate that the Edwards reference describes a system in which a "log method" and a "logger daemon" work together to perform 'tracing'. The following statement of Edwards also indicates that, through the use of the unique ID, the "log method" and "logger daemon" may even work together to perform 'logging'.

A unique ID 20 provides an identifier for a group of which the log method is associated. For instance, a Java applet program may be comprised of different components, each performing some particular defined function or category of functions within the applet. In such a case, the software developer may assign a unique ID to each component of the applet, such that the log methods having the unique ID associated with a particular component would be used to trace the execution of those Java statements related to that particular component.

Col. 3, lines 19 - 28.

However, the Applicant respectfully submits that the teachings of the Edmonds reference differ from those of the present application at least in the following respect: whereas the log method and logger daemon of Edmonds appear to be completely different functional entities having little or no overlap of functions between them (the log method causes traces to be written into the queue while the logger method empties the queue), by

contrast, the tracing and logging modules of the present application are 'different but similar' having some functional overlap between them but not being identical. The 'different but similar' aspect of the tracing and logging modules manifests itself from their being instances of different sub-classes of the same class. That is, they inherent 'same' properties from the primary class but inherent 'different' properties from their respective sub-classes of the primary class.

The Applicant has amended independent claims 1 and 18 in order to emphasize this distinction between the teachings of the Edmonds and the present application. Independent claims 26 and 34 are already included this distinction and so no amendment has been made in these claims.

Closing Comments

Because the Applicant has demonstrated the patentability of all pending independent claims, the Applicant respectfully submits that all pending claims are allowable. The Applicant's silence with respect to the dependent claims should not be construed as an admission by the Applicant that the Applicant is complicit with the Examiner's rejection of these claims. Because the Applicant has demonstrated the patentability of the independent claims, the Applicant need not substantively address the theories of rejection applied to the dependent claims. Moreover, where the Applicant has failed to address a specific independent claim element alleged by the Examiner to be covered by prior art, such failure should not be viewed as an admission by the Applicant that the Applicant accepts or agrees with the Examiner's reasoning.

In the further interests of efficiency, the Applicant reserves the right under MPEP 2144.03.C to cause the Examiner to find in the prior art subject matter to which the Examiner has taken Official Notice at a later time in the prosecution of the present case when the subject matter of such prior art is actually at issue.

CONCLUSION


Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Robert B. O'Rourke at (408) 720-8300.

Pursuant to 37 C.F.R. 1.136(a)(3), applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

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